

4115-178

**SECTION II****REMARKS****A. Summary of Amendment to the Claims**

Claims 5 and 21 have been amended as set forth in the above Complete Listing of the Claims. As amended, the claims are supported by the specification and the original claims. No new matter has been added, as defined by 35 U.S.C. § 132.

Upon entry of the amendments, claims 1-30, 40-42, 62, 63 and 79 will be pending in the application. The examiner has indicated that claims 17 and 18 are withdrawn, however, applicant requests rejoinder of those claims, as set forth under heading B below.

The amendments made herein are fully consistent with and supported by the originally-filed disclosure of this application.

**B. Restriction Requirement**

The Restriction Requirement of February 9, 2007 was a requirement of election by applicants among species identified as 1) foreign immunogens and 2) endogenous immunogens. In reply, applicants elected foreign immunogens. Applicants then elected an additional sub-species of viral proteins from claim 13. The examiner has subsequently withdrawn claims 17 and 18, reciting non-elected species endogenous immunogens.

However, it is understood that in a species election, if any species is found to be allowable, that an additional species will be examined, until all species have been examined. i.e. all sub-species of foreign immunogens and all immunogens (foreign and endogenous). If any generic claim is finally held to be allowable, all claims drawn to species containing all elements of the generic claim will also generally be held to be allowable. (MPEP § 806.04(d)).

Accordingly, the examiner's withdrawal of claims 17 and 18 as reciting non-elected species is not understood. Rejoinder of these claims is respectfully requested.

4115-178

**C. Objections to the specification**

The examiner has noted the use of trademarks in the specification and has requested that with each occurrence capitalization be included, along with the generic terminology. A search of the application for the symbol "®" reveals only a single use in the application, at page 15, line 5, in reference to the QIAEX® II Gel Extraction System. In this occurrence, capitalization is included and the generic description "a gel purification kit" is included. It is believed this inclusion of a trademarked product in the specification, as filed, is in compliance with the requirements of such use. If additional language in the specification is objected to, particular identification of such is respectfully requested.

Furthermore, the specification has been objected to due to the inclusion of hyperlinks or other browser executable code in the text of the application. By the present amendment and response, applicant has eliminated use of such text in the application. As no such language remains in the specification, withdrawal of the objection is respectfully requested.

**D. Claim Objections**

The examiner has objected to claims 5 and 21. In accordance with the examiner's comments, claim 5 has been amended to recite "includes" instead of "include" and claim 21 has been amended to end in a period instead of a semicolon.

Withdrawal of the examiner's objections is respectfully requested.

**E. Claim Rejections under 35 USC § 112**

Claims 40-42 and 62-63 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement of that section. Claims 40-42 recite a method of vaccination and claims 62-63 recite a method of inducing an immune response or biological activity. It is the examiner's allegation that these methods are not enabled by the specification, as filed. Applicants respectfully disagree.

Specifically, the examiner applies the *In re Wands* factors to the analysis. Applicants submit that an analysis of such factors leads to the conclusion that one of skill in the art would have been enabled to perform the claimed methods of vaccination and inducing an immune response. The

4115-178

factors "Guidance in the Specification" and "Working Examples" are detailed by the examiner as insufficient to provide enablement to the methods of claims 40-42 (method of vaccination by administering a vaccine) and claims 62-63 (method of inducing an immune response or biological activity by administering a vaccine). The examiner states that "there is insufficient disclosure to reasonably predict that the methods and compositions of the instant specification would prevent a disease after vaccination."

The examiner's attention is respectfully drawn to the specification at pages 19-21, where it is discussed in detail how the rdsRP can be administered to dendritic cells *in vitro*, how rdsRP vaccines are formulated, how rdsRP vaccines are administered to animal tissues and how rdsRP are orally administered. Furthermore, examples 8-11, while prophetic, provide detailed direction to one of skill in the art with regard to infection of human dendritic cells *in vitro* with rdsRP (Example 8), immunogenicity of rdsRP vaccine vectors in mice (Example 9), measurement of immune responses (Example 10), and vaccination protocol discrimination criteria (Example 11).

With regard to enablement, one of skill in the art would have combined the teachings of human dendritic cells *in vitro* with the *in vivo* mouse vaccinations and would have found the combination to be reasonably predictive of the efficacy of the claimed methods of vaccination and inducing an immune response or biological activity. Accordingly, withdrawal of the rejection of claims 40-42 and 62-63 for lack of enablement under 35 U.S.C. §112, first paragraph, is respectfully requested.

#### **F. Double Patenting**

Claims 1-16, 19-30 and 79 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 7,018,835 ("the '835 patent").

Applicant acknowledges the double patenting rejection over claims 1-19 of the '835 patent, however, applicant defers responding to the rejection until the claims of the subject application are otherwise determined to be in a condition for allowance.

4115-178

**CONCLUSION**

Based on the foregoing, all of Applicants' pending claims 1-16, 19-30, 40-42, 62, 63 and 79 are patentably distinguished over the art, and are in form and condition for allowance. The Examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the April 2, 2007 Office Action without extension was set at three months, or July 2, 2007. This response is therefore timely and no fees are believed to be due for the filing of this paper. However, should any fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the Examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same.

Respectfully submitted,

Date: July 2, 2007



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